In the course of his Judgment, Tomlin, J., stated at page 665:—

> "Having come then to the conclusion in the present case that the Pelham Club is an illegal association I have next to consider that relief can be given in a case of this sort..... I do not myself believe that the law is so powerless that when money is in the hands of persons who have received it for application for an illegal purpose, it cannot protect the contributors or enable them to recover it before it has been applied for this illegal purpose." (The learned Judge then considered other reported cases). Three of these cases, he continued: "were all cases where an illegal association was seeking to recover money lent by it; and it was necessarily held that the association being illegal the contract with it could not be enforced by it. It is a different case where those who have subscribed money for an illegal purpose come requiring the agents in whose hands it is and who were to apply it for that purpose and have not done so, to return it to them. I am happy to think that the law is not so feeble that it cannot protect the subscribers by ordering an account: but in saying this I am expressing no opinion as to what will take place after the account has been taken and by what means if any the defendants may discharge themselves of the money they have received."

The correctness of the above decision has never been questioned; and with the greatest respect, it seems to me not only good law but common sense.

In a somewhat similar case, *Marrs and others* v. *Thompson*, (1902) 18 T.L.R., page 555 the Court of Appeal in England held that the trustees of an unregistered friendly society consisting of more than twenty members were entitled to sue the Society's treasurer for the recovery of money of the Society in his hands; but in that case, there appeared to be some doubt as to whether the Society was one which needed to be registered under the Companies Act.

I therefore hold on the preliminary point of law, that this Court is not debarred from affording relief to the plaintiff on behalf of himself and all other busowners except the defendants, Ang Boon Siew, Ong See Neo and Tan Thean Neo who have hitherto been operating under the common name of "Keppel Bus Company," by granting an account.

I order that the costs of the trial of this preliminary issue be the plaintiffs in any event.

Order accordingly.

Solicitors for the Plaintiff—
Donaldson & Burkinshaw

Solicitors for the Defendant—
Aitken & Ong Siang.

[ORIGINAL CIVIL JURISDICTION]
McELWAINE, C.J.
March 31, 1937.

SYED ABDULRAHMAN BIN SHAIKH ALKAFF v. MUNICIPAL COMMISSIONERS.

[SINGAPORE ORIGINATING MOTION No. 17 of 1937.]

Municipal Ordinance (Cap: 133) ss. 58 (1) (j), 143 (1) m.—Power to make building by-laws—Scope of the powers—Definition in Ordinance of "erect"—Applicability of, to by-laws.

By the Municipal Ordinance (Cap: 133) s. 58 (1) (j) power is conferred on the Municipal Commissioners to make by-laws for the regulation of buildings and building operations. By s. 143 (m) it is provided that such power shall include power to make by-laws for "the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street." The Singapore Municipal Commissioners under these powers passed a by-law stipulating that any person "who shall erect a building which abuts on any street or road shall provide a verandah-way or an uncovered foot-way of the width of at least seven feet.."

Held (1) the by-law was *intra vires*; (2) the word "erect" in the by-law bore the meaning assigned by s. 144 (10) notwithstanding that it was made under another section and that the statutory definition of "erect" laid down by s. 144 (10) was not confined to s. 144.

Order Nisi to show cause why a Writ of Mandamus should not issue to the Municipal Commissioners, Singapore, calling upon them to show cause why they should not consider certain building plans submitted by the prosecutors, the partners of Messrs. Alkaff & Co. without reference to the said building by-law, discharged.

The notes and arguments are sufficiently set out in the judgment.

O'Connor for the Municipal Commissioners of Singapore showed cause.

Walters for the partners of Alkaff & Co. in support of the Order Nisi.

Cur. Ad. Vult.

McELWAINE, C.J.—On the 16th November, 1936 an order was made by this Court calling upon the Municipal Commissioners of Singapore to shew cause why a Writ of Mandamus should not issue directing them to consider certain building plans without having regard to section 143 (1) (m) of the Municipal Ordinance or to By-law No. 121 of the Building By-laws.

Messrs. Syed Abdulrahman bin Shaikh Alkaff and Syed Aboobakar bin Hussain Alkaff whom I shall hereafter refer to as the Relators are owners of a large number of houses in Singapore. In 1936 they submitted plans under section 144 of certain alterations which they desired to make in a building owned by them which fronts on De Souza Street, and extends over the land separating De Souza Street from Almeida Street (which is roughly parallel to De Souza Street) on which latter street the East side of the building fronts.

The plans related to alterations in the ground floor outer wall fronting on De Souza Street. The present outer wall is so constructed that the weight of the upper storey is carried on pillars, the space between the pillars being filled

in by a lightly constructed but still substantial wall into which windows are set. This wall does not carry the weight of the superstructure and for convenience I refer to it as the pannel.

The relators' plan proposed to demolish two of these pillars and to rebuild the pannel wall of the ground floor increasing the amount of window space and generally with a view to improving the frontage.

The side of De Souza Street on which the Relators' building fronts is occupied by two buildings.

The Mercantile Bank of India, a new building, extends from Raffles Place to a narrow passage a couple of feet wide which separates it from the Relators' building which extends to the Finlayson Green end of De Souza Street.

The new Mercantile Bank of India is built with a verandah way or five foot way, that is to say, the ground floor offices of the bank are contained by a wall set back seven feet from the edge of the street. The upper stories of the Bank come out to edge of the street and are supported by massive pillars. Between these pillars and the wall is a passage forming a side walk to the street upon which the public has a right under section 2 of the Minor Offences Ordinance to pass, commonly known as a five foot way or arcade or verandah way, which extends the length of the Bank until it reaches the narrow passage to which I have referred.

The Relators' building is not a new one. It extends to the edge of de Souza Street, and as the ground floor offices extend to the edge of the Street there is no five foot way or arcade or verandah way between the street and the ground floor offices of the Relators.

In rejecting the plans submitted, the Municipal Commissioners, as required by By-law 39 gave their reasons which were:

> That the plans did not conform to Section 143 (1) (m) or to Building By-law No. 121.

The Building By-laws are made under paragraphs (j) and (k) of section 58 (1) which reads:

> "The Commissioners may make by-laws for or in respect of
>
> (j) the regulation of buildings and building operations;
>
> (k) the prohibition of the erection of a building of a particular class, design or appearance in particular districts, localities or streets or portions of streets within Municipal limits.

Section 143 so far as material reads:

> (1) The powers hereinbefore given to the Commissioners to make by-laws for the regulation of buildings and building operations.....hereinafter called the building by-laws, shall include the power to make by-laws in respect of all or any of the following matters:—
>
> (m) the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street.
>
> (2) Nothing in this section shall in any way restrict the generality of the powers conferred..... by section 58(1) (j) and (k), but such powers shall extend to all matters, whether similar or not to those in this section mentioned, as to which it is expedient to make by-laws for the regulation of buildings and building operations.

Building By-law No. 121 reads:

> "Every person who shall erect a building which abuts on any street or road shall provide a verandah-way or an uncovered footway of the width of at least seven feet measuring from the boundary of the street or road to the face of the wall of the building at ground floor level or (if the building be a wall, gate, post, pillar, grating, frame, hoarding, step, dock, wharf, pier, jetty, landing-stage or bridge) to the front of such wall, gate, post, pillar, grating, frame, hoarding, step, dock, wharf, pier, jetty, landing-stage or bridge nearest the street at ground level, and the footway within any verandah-way must be at least five feet in the clear.
>
> Provided that in the following streets the verandah-way shall be of the width of at least eight feet, and the foot-way within the verandah-way shall be at least six feet in the clear:—
>
> Chulia Street,
> Raffles Place,
> High Street.
>
> The expression 'street' shall have the same meaning as that expression has in Ordinance No. 135 (Municipal)."

The contention of the Relators is that the By-law has no application to a case where, as in the present case, comparatively minor alterations are proposed.

"Erect," Mr. Walters argued, means "erect" in the ordinary sense of the word and it should not be extended so as to include the artificial meaning given to the word in section 144 (10) a definition, Mr. Walters contended, is confined to section 144.

Section 143 (1) (m), he argued, does not mean that the By-laws can require a person to provide a five footway, but if a person does provide one the Commissioners may direct the

method in which it is to be made and the level at which it is to be placed in relation to the street.

His argument as I understood it was that section 58(i) (j) is the dominant provision and relates solely to the prescription of how buildings are to be designed and how the building operations are to be carried out, that is to say what scaffolding is to be used and what precautions are to be taken for the safety of the workmen and of such persons as may be in the vicinity of the building which is being constructed; and that section 143(1) is merely an extension of section 58(i) (j) and must be read in the same sense; and that as there is no power to make by-laws directing people to erect buildings therefore there is no power to make by-laws directing people to construct arcades or pavements. In support of his argument he pointed out that when it was intended that by-laws should direct specific things to be provided section 143 (i) (f) (n) (p) use the words "provision" or "supply" and that no such word is used in (m). He further argued that the Municipal Commissioners were trying to improve a street, a matter dealt with in section 58 (i) (g) to which section 143 is in no way related, or to widen a street, a matter for which compensation must be paid under section 37.

I am unable to accept this argument. It appears to me that the phrase "regulation of buildings" used in section 58 (i) (j) is vague and that section 143 is supplied to explain it. The two sections must be read together. Nor do I think that the absence of such word as "provide" or "supply" from section 143 (i) (m) shew that "construction" is not intended to include "provision." Neither "supply" nor "provision" is used in section 143 (i) (c) (s) or (t) yet I cannot imagine that the Legislature only intended to empower the Commissioners to make by-laws as to how foundations, roofs and stairs are to be constructed which by-laws were to have no force if the owner of Mr. Walters' hypothetical twenty storey building decided to have no foundations or intended to have no stairs but only ladders or lifts to give access to the upper stories.

In addition, section 143 (i) (m) appears to be the only section under which a person can be directed to provide a verandah way or passage for foot passengers between a building and the carriage way of a street. The marginal note to section 108 (i) is "construction of foot-paths" a word not used in the subsection which compels the owner of the frontage of certain vacant land to allow a footpath to be made. This latter section casts the cost of constructing the footpath upon the Commissioners. The Commissioners take the land "subject nevertheless to the right of each owner to build thereon in such manner as he would have been entitled to build thereon if the land had not been taken for use as a public footway" section 108 (6). The words "in such manner as he would have been entitled to build" are wide enough to include "subject to the Building By-laws," which may provide for the arcade or five-foot way.

Indeed, there are indications that "construction" in section 143 (i) (m) means nothing more than provision of land at a certain level and the erection of an arcade because section 95 (i) requires the Commissioners so far as funds permit to cause all footways whether covered by arcades or not, to be paved, metalled, flagged, fenced and kept in repair.

The use of the words "covered by arcades" shews that foot paths the soil of which is owned by the owner of the arcade are intended as the owner of the building could not build an arcade over a foot path the ownership of which was in the Municipal Commissioners. This section 95 compels the Commissioners to do those things which amount to construction of a footpath under an arcade—which means the footway over which the public has by virtue of section 3 of the Minor Offences Ordinance, a right of way and if the statute means that the Commissioners must bear this expense it is difficult to see how a by-law can compel the owner of the land subject to this public right to do this construction himself. This is some slight indication that "construction" in section 143 (i) (m) of this difficult Ordinance does not bear its ordinary meaning but means only "provide or set aside the land" upon which, while it remains the property of its owner, the Commissioners shall construct a path along which the public has a right of passage; and he constructs the arcade under which this path is to pass. I would refer too to the words "land *required* for the purpose of an arcade" in section 144 (5).

"A statute" said Lord Dunedin in *Whitney* v. *Inland Revenue Commissioners*, (1926) A.C. at page 52 "is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

To restrict the word "construction" to its ordinary meaning to the exclusion of "provision" would, I think, make the arcade provisions of the Ordinance practically unworkable.

Arcades are eminently necessary in many of the streets of Singapore and I have no evidence that any large number of the landowners of Singapore would voluntarily surrender their rights to build to the edge of these street frontages over land "required for the purpose of an arcade" so as to necessitate special power to make by-laws as to how the arcade portion of the building is to be constructed and designed.

I believe the law has been acted upon in this

sense for forty-eight years. This does not of itself make the view right but it is an indication that for nearly half a century the legislature has been taken as having intended "construction" in section 143 (i) (m) to include "provision" and no alteration was made in this respect in the last substantive Municipal Ordinance of 1913 which repealed and replaced the Ordinance of 1896 and its various amending Ordinances. The Legislature has therefore repeated a word which for many years had been acted upon as including "provision."

Taking all these circumstances into consideration I think that Section 143 (i) (m) allows by-laws to be made directing persons to provide arcades or at any rate five footways whether covered by arcades or not

But this does not mean that the Commissioners can make a by-law requiring any house owner in a street to provide an arcade or pavement for the use of foot passengers. Such a by-law could not compel the owner of an existing building lawfully constructed to demolish it to provide such a footway. A by-law under section 143 (i) (m) can only be applied when a building is about to be erected.

Possibly each party would accept this view provided I use the word "erect" in the sense for which he contends.

Before considering the meaning of 'erect' I would say a word on the question of compensation. There is no proposal to compensate the relators for the serious restriction sought to be imposed upon their enjoyment of this property.

I understand it to be a well settled principle that no person can be deprived of his property without compensation save under statutory authority or when it is deemed to be reasonably necessary for the defence of the realm against a peril which may reasonably be regarded as being imminent.

Now the Municipal Ordinance makes abundant provision for compensating people whose land is taken by the Commissioners for streets, street widening or back lanes. These are cases in which the land itself is acquired as distinct from the mere acquisition of a right of way over land the ownership of which is not otherwise disturbed. Mr. O'Connor says it has always been the policy not to compensate for arcades and I think this policy is indicated in the Ordinance. Not only is the Ordinance silent about compensation being paid when this right of way is demanded, the only mention of compensation in connection with an arcade is in section 144 (5) which expressly states that no compensation shall be paid. True, this subsection only refers to cases where buildings are directed to be set back to the regular line of street, but I think the express refusal of compensation in this case is not confined to this case, but is inserted to make it clear that the compensation ordered by the subsection is not to include compensation for the arcade footway.

Indeed, if compensation were intended to be made for the acquisition of this bare right of way, I would expect the Ordinance to prescribe how the compensation is to be ascertained. These arcades or five foot ways do not divest the owner of all his rights. He may not build on but he may build over the public passage. The Military Manoeuvres Ordinance in section 14 makes special provision for compensation where a person is not deprived of his ownership of the land, but only deprived of part of his rights in land which remains his own. There is no similar provision for compensation for five-foot ways.

I now turn to what appears to be the main point of the case and that is, the meaning of the word "erect" in By-law No. 121.

I may be mistaken, but I do not think that Mr. Walters would quarrel with this By-law provided it is construed as applying to the construction of new or substantially new buildings in the ordinary sense of the word.

Mr. O'Connor however argues that when the By-law speaks of erecting a building it uses the word 'erect' in a sense that no one would ordinarily attribute to it. He says that 'erect' is defined in section 144 (10) that this definition covers the Ordinance and gives the meaning of 'erect' wherever it is used in the Ordinance and By-laws. He contends that what the relators purpose to do in the plans submitted amounts to erecting a building within the meaning of section 144 (10) (b) (ii) and (h) which so far as material read:

"A person shall be deemed to erect a building who

(b) adds to or alters any existing building in such a manner as to involve:

(ii) new or partly new or increased superstructure on existing foundations:

(h) renews or repairs any existing building in such a manner as to involve a renewal, re-construction or re-erection of any portion of an outer or party wall to the extent of one storey in height.

In my opinion the proposed work does involve "erecting a building" within each of these subparagraphs. Mr. Walters argued that this subsection (10) of section 144 contains a definition for the purposes of section 144 only and does not contain a general definition of "erect" applicable to other sections.

Upon the whole, and not without considerable regret I have reached the conclusion that Mr. Walters' argument on this point is unsound.

This subsection (10) of section 144 may be found *in embryo* in section 136 (4) of the

Municipal Ordinance 1887 the first section of a concatenation headed New Buildings. It was substantially reproduced under the same general heading "New Buildings" in section 151 of the Municipal Ordinance 1896.

Section 136 of the Ordinance of 1887 was not a by-law making section. It required "every person intending to erect or re-erect a building" to give notice, plans and specifications and he "shall obey all written directions in respect of, *inter alia*, "the construction of an arcade along the front if the building for the use of foot passengers of the building abuts on a street."

Section 138 of that Ordinance extended the powers of the Commissioners to make by-laws for the regulation of buildings to include by-laws in respect of all or any of the particulars mentioned in section 136.

The Ordinance of 1887 was repealed and replaced by the Ordinance of 1896 section 151 which corresponds to section 136 of the earlier Ordinances but this section 151 had a subsection providing that "Any person dissatisfied with any order or decision of the Commissioners" in respect of the construction and level of an arcade "may appeal to the Governor-in-Council." Section 153 of the 1896 Ordinance was to the same effect as section 138 of the 1887 Ordinance. Section 151 (3) contained the definition of "erect any building."

The position therefore was that in 1896 the Commissioners could give directions to a person intending to erect or re-erect a building in respect of the construction of an arcade and from such direction an appeal lay to the Governor-in-Council, or, they could make by-laws in respect of the matter in which case presumably there was no appeal. The rule making power therefore in 1896 inluded power to make rules relating to the construction of arcades when a person intended to erect or re-erect a building and this very section giving this power contained a definition of "erect a building" which has been expanded in the present section 144 (10).

It appears therefore, that had the by-law now complained of been made in 1887 or in 1896 it would have been made under the section which authorized by-laws for the construction of verandahs in connection with the erection of buildings and which section also explained what was meant by "to erect a building."

By-law 34 of the 1889 by-laws reads:

> "Every person who shall erect a new building which shall abut on any street shall provide a verandah way of the width of seven feet."

and there can be no doubt that "erect a building" in that by-law included doing the things which the section said that the expression includes.

Sections 151 to 153 of the 1896 Ordinance were replaced by new sections by the amending Ordinance of 1907 and are now substantially represented by the present sections 143, 144.

By-law 50 of the 1908 By-laws reads:

> "Every person who shall erect a building which shall abut on any street or road shall provide a verandah" etc.

Did "erect" in that by-law bear a different meaning to that which it bore in the by-law of 1889?

It appears to me from the history of this definition of "erect" and from the context in which it was used that it applied to the fascicule of sections headed "new buildings" in 1896 and now headed "Buildings, Open Spaces and Back Lanes."

I see no reason to think that the Legislature when it split up section 151 of the Ordinance of 1896 into the two sections now represented by sections 143 and 144 intended to make the special definition of "erect a building" cease to apply to matters to which it formerly applied. Had it been intended to limit the special definition to section 144 it would have been so easy to commence sub-section (10) "A person shall, *for the purposes of this section*, be deemed to erect" but there are no such limiting words in the subsection.

I am therefore unable to say that the reconstruction of these sections has given them a different meaning to that which they possessed in 1896 and the meaning they bore in 1896 is that which the Commissioners say they still mean.

Mr. Walters urged the argument that it is unreasonable and unjust to apply section 144 (10) as a general definition applicable to section 143 and to by-laws made under that section and section 58, and that if a section is capable of bearing a reasonable interpretation as well as an interpretation which results in injustice, the reasonable interpretation should be adopted.

Is a person who renews an outside wall of the top storey or a twenty storey building to be required to pull down the whole face of the building so as to provide a verandah way? he asked. I am afraid he must. If the Legislature gives wide powers to a public body to make by-laws and the by-laws are in conformity with those powers a Court cannot say that the by-laws are unreasonable without saying that the Ordinance which authorized them is unreasonable.

"If Parliament passed an Act which resulted in an absurdity the absurdity must be followed, but if there was any reasonable possibility of giving the Act a reasonable construction this Court should lean to that possibility." *The City of Edinburgh*, (1921) P.

page 71 or, as it is put in *Maxwell's* Interpretation of Statutes 7th Edition page 166 "An argument drawn from an inconvenience, it has been said, is forcible in law; and no less, but rather more, force is due to any drawn from an absurdity or injustice. But a Court of Law has nothing to do with the reasonableness or unreasonableness of a statutory provision, except so far as it may help it in interpreting what the Legislature has said."

Mr. Walters has given instances of repairs or alterations which fall under section 144 (10) which he says are unreasonable and unjust if those repairs and alterations must result in a consequential construction of arcades, but his difficulty is that some of the works enumerated in the subsection may well amount to making a substantially new building in connection with which it is reasonable to require an arcade to be constructed and I fail to see how a Court can say that bits of section 144 (10) apply to section 143 and that other bits do not.

The subsection provides tests as to what is an erecting of a building. During the argument I put the case of a house in which many of the internal walls and floors and roof and stairs were removed leaving nothing but the skeletion of the former house and which was then rebuilt. At what point do such repairs constitute a new house? The subsection provides a useful test as to what is a new house.

If part of it is appropriate to section 143 it is not possible to split up the subsection and say that it is reasonable to read part of it with section 143 but unreasonable to read other parts with that section.

It would be possible, of course, for the by-law to adopt a less wide definition of "erect" or to reserve power to exempt from By-law 121 or even to give an appeal such as the old Ordinance provided, but these possible reliefs against hardship cannot affect the construction of the subsection, parts of which are reasonably applicable to section 143 while other parts may not be so.

I have arrived, not without doubts and regret, at the conclusion that when By-law No. 121 uses the word "erect" it uses it not only in its ordinary meaning but also in the extended meaning given it by section 144 (10) and that it directs an arcade to be constructed and this is a matter which the Commissioners are empowered to prescribe by by-law made under section 143 (1) (2).

For these reasons the order calling upon the Commissioners to shew cause why a writ of Mandamus should not issue against them must be discharged.

During the argument Mr. O'Connor suggested that apart from By-law 121 and sections 143 and 144 the Commissioners could not approve the plans because the plans shew concrete sunshades projecting over de Souza Street and this street is only twenty five feet wide; he referred to section 115.

If this were the only difficulty the Commissioners could return the plans with a statement that they could not lawfully approve them unless the sunshades were removed. That, I think, is the purpose of section 144 (2) (a).

I was asked by each side to express my view of the meaning of section 115.

Section 114 (1) empowers the Commissioners to direct the removal of any projection which everhangs, or juts into, or projects into or encroaches up or is an obstruction to the safe passage along a public street.

Section 115 expressly empowers the Commissioners to allow such projections to be made in streets not less than thirty feet in width.

Apart from statute no person has a right to build over the land of another without a licence from that other person. Such a licence may be granted unless there is a legal objection to the grant. When therefore the section gives the Commissioners express power to permit projections over their own property—the public street—if the street is not less than thirty feet wide—I think there is an implication that they are not to permit such projections in streets of lesser width.

It may be that there are public streets vested in the Commissioners *qua* streets, the ownership of the soil of which is not vested in them and this section empowers them to give the permission without reference to the owner of the freehold but it is not limited to such cases. The Legislature appears to have considered that in narrow streets the projections specified in section 115 (1) are objectionable, perhaps as obstructions of light or air.

The Order of the 16th day of November, 1936 calling upon the Municipal Commissioners of the Town of Singapore to appear and shew cause why a Writ of Mandamus should not issue directed to them commanding them to consider in accordance with law and without reference to Building By-law No. 121 or to section 143 (1) (m) of the Municipal Ordinance whether or not they should approve the plans submitted by the relators, is discharged.

Rule discharged.

Solicitors for the Municipal Commissioners—*Drew & Napier.*

Solicitors for Messrs. Alkaff & Co.—*Allen & Gledhill.*

END OF STRAITS SETTLEMENTSOFFICIAL REPORTS.